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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/813,327

03/20/2001

Remy F. Gross II

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7590

01/29/2004

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EXAMINER

SHERRER, CURTIS EDWARD

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 01/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/813,327

Applicant(s)

GROSS ET AL.

Examiner

Curtis E. Sherrer, Esq.

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/09/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-37 and 39-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-37 and 39-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 1761

DETAILED ACTION

This action is meant to supplant the last Office action as it inadvertently failed to reject claim 38. As the after final amendment is being entered, the limitations of claim 38 are now incorporated into claim 36.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 24, 35, and 37 are indefinite because the scope of the term "about" is indefinite. The basis for determining whether a term or phrase is indefinite is whether those in the art can determine the scope of said term or phrase. It is noted that MPEP 2173.05(b) also sets forth that the phrases "if the order of" and "substantially" are indefinite. They are considered to be variations or synonyms of the term "about."

Claims 24 and 36 are indefinite because the scope of the phrase "partially aged beverage" is not known. Specifically, the term "partially" renders the phrase indefinite. It is not clear when a beverage would be partially aged versus, for example, fully aged. Applicants cite to their specification by stating that it can take 3 to often 4 years to produce a marketable aged beverage.

Art Unit: 1761

But this does not provide a basis on which those in the art can determine if a beverage is fully aged or partially aged.

The rejection of claims 25 and 38 based on the use of the phrase "interchangeable cartridge" is withdrawn. Applicants have shown that the specification clearly intends the phrase to mean "that one cartridge may used and then removed from the system without affecting any of the other components. Subsequently another cartridge may be added in its place for the next run."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 36 and 39-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Apeldoorn et al. (U.S. Pat. No. 5,980,694)("Apeldoorn").

With regard to the limitations of claim 38, which have been incorporated into independent claim 36, they are anticipated by Apeldoorn. Specifically, any of the containers shown in Figs. 1-3 can be characterized as a cartridge having an inlet and an outlet. The fact that the claim requires the cartridge to be interchangeable, is seen as a very broad limitation implying that it can be replaced. It is inherent that any of the containers can be replaced.

Response to Arguments

Art Unit: 1761

Applicants arguments of 05/12/03 and 10/09/03 have been considered but are not found persuasive. Applicants argue that Apeldoorn's filter is not utilized during processing. The term "processing" is not interpreted as narrowly interpreted as Applicants. It is noted that the processing steps are occur in no particular order.

Applicants also argue that the valves in Apeldoorn are not used for sampling. In response, it is noted that as long as they could function for sampling then they meet the claimed limitation.

Applicants argue that the container of Apeldoorn does not anticipate the claimed container. It appears that applicants are relying on the intended use of the claimed container and this reliance is not persuasive. A container that can hold oil or water can certainly hold anything, including applicants intended fluid.

With regard to applicants arguments presented on 10/09/03, nothing found in those arguments is found persuasive that the pending rejections are improper.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 1761

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer whose telephone number is 703-308-3847. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3602 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A handwritten signature in black ink, appearing to read 'Curtis E. Sherrer', with a stylized, flowing script.

Curtis E. Sherrer, Esq.
Primary Examiner